

MALAYSIAN REPORTS**GOH JUNG SUAN & ANOR. v.
WONG FOOT LIAN**[F.C. (Suffian L.P., Lee Hum Hoe C.J. (Borneo) and
Ong Hock Sim F.J.) January 9, 1976]

[Kuah Lumpur — Federal Court Civil Appeal No. 26 of 1974]

Damages — Personal injuries — Damages for future loss of earnings — General damages for pain and suffering and loss of amenities — When appellate court can interfere with award.

In this case the High Court had awarded \$23,400 for future loss of earnings and the sum of \$48,000 by way of general damages for pain and suffering and loss of amenities. The appeal was against the quantum awarded.

Held: (1) the multiplier employed at arriving at the figure of \$23,400 was on the high side, as the sum was for loss of earnings from June 24, 1969 to February 2, 1974, when the respondent will be about 40 years. The proper award should be \$16,902;

(2) the respondent's age was 35 years at the time of the accident and this should have been taken into consideration in awarding damages for pain and suffering and loss of amenities. An award of \$35,000 would be reasonable under this head.

Cases referred to:-

- (1) *Chan Kum Fook v. Wong Siew Kay* Singapore Suit No. 848 of 1970 (unreported).
- (2) *Jag Singh v. Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463, 465.
- (3) *Wong Khang Jong v. Ali & Anor.* [1970] 1 M.L.J. 56, 57.

FEDERAL COURT.*E.C. Khoo* for the appellants.*S.S. Chan* for the respondent.

Ong Hock Sim F.J. (delivering the judgment of the Court): This appeal only concerns quantum and seeks intervention of this court in regard to the sum of \$23,400 for future loss of earnings and the sum of \$48,000 by way of general damages for pain and suffering and loss of amenities.

An appellate court is loth to interfere with an award made by the trial court. We do so now only because we are of the view that the learned judge had overlooked the fact that the sum of \$8,100 was for loss of earnings from June 24, 1969 to February 2, 1974 and the respondent would then be almost 40 years. The multiplier employed in arriving at the figure of \$23,400 was therefore on the high side and we would agree with appellants' counsel that using the Whitaker table at 6% per annum interest, the proper award would be \$16,902 and we accordingly vary this award.

For the award of \$48,000, the judge accepted *Chan Kum Fook v. Wong Siew Kay & Anor.*⁽¹⁾ as one where the injuries suffered "most closely approximates" those suffered by the respondent. Those details appear at page 42 of the record. As the Privy Council said in *Jag Singh v. Toong Fong Omnibus Co. Ltd.*⁽²⁾:-

"Caution has to be exercised when paying heed to the figures of awards in other cases. This is particularly so where cases are merely noted but not fully reported. It is necessary to ensure that in main essentials the facts in one case bear comparison with the facts of another before any comparison

A between the awards in the respective cases can fairly or properly be made."

It is to be observed that \$48,000 was the sum awarded to Chan Kum Fook whose age was 22 years. The respondent's age was 35 years at the time of the accident. The observations made by Ong, C.J. in *Wong Khang Jong v. Ali & Anor.*⁽³⁾ seem appropriate and may be quoted:—

"There was probably little difference in the extent of pain endured in both cases. Yet two persons were given identical awards...".

With respect, the learned judge has not stated whether he gave any, if at all, consideration to this age factor in awarding an identical amount, other than a reference to a chance of developing epilepsy. The evidence of the neuro-surgeon discounts this aspect. We are not referred to any comparable award but in view of the cranial damage, there, however, being no shortening of the expectation of life, we think an award in the sum of \$35,000 reasonable and we would therefore vary the award under that head accordingly.

D We would make no order as to costs.

*Order accordingly.*Solicitors: *Khoo & Sidhu; Murphy & Dunbar.***EH RIYID v. EH TEK**[F.C. (Suffian L.P., Raja Azlan Shah and Wan Suleiman F.J.J.)
January 19, 1976]

[Kota Bharu — Federal Court Civil Appeal No. 4 of 1974]

F *Practice and Procedure — Claim by beneficiary of estate — Not made in representative character — Other beneficiaries not joined — Whether suit maintainable — R.S.C. 1957, O.16 rr.8 & 9, O.25 r.2.*

G The plaintiff had brought an action to correct an error in the land register. The land belonged to the plaintiff's grandmother. The plaintiff was one of the beneficiaries of the estate of the grandmother but he did not join the other beneficiaries as plaintiffs nor was the action brought as a representative action. On a preliminary objection, the learned judge in the High Court dismissed the action. On appeal,

Held, (Raja Azlan Shah and Wan Suleiman F.J.J., Suffian L.P. dissenting) dismissing the appeal: that the learned trial judge was correct in dismissing the action.

Cases referred to:-

- H (1) *Tuan Man & Anor. v. Che Som & Ors.* (1930) 1 M.C. 134.
- (2) *Markt & Co. Limited v. Knight Steamship Company Limited* [1910] 2 K.B. 1021.
- (3) *Beeching v. Lloyd* 3 Drew 227.
- (4) *Duke of Bedford v. Ellis & Ors.* [1901] A.C. 1, 8.
- (5) *Taff Vale Railway v. Amalgamated Society of Railway Servants* [1901] A.C. 421, 442, 443.
- (6) *Meux v. Maltby* (1818) 2 Sw. 277.
- (7) *Commissioners of Sewers v. Gellatly* (1876) 3 Ch.D. 615.
- (8) *Pegang Mining Co. Ltd. v. Choong Sam & Ors.* [1969] 2 M.L.J. 52, 55.
- (9) *Federal Flour Mills Ltd. v. Owners of the Vessel "Ta Tung" & Anor.* [1970] 2 M.L.J. 147.
- (10) *Guarantee Trust Company of New York v. Hannay & Co.* [1914-15] All E.R.Rep. 24.